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II.—THE PROSECUTION OF LIFELESS THINGS AND ANIMALS IN GREEK LAW.

PART I.

Among the scenes wrought on the shield of Achilles was a King's demesne on which a corn-harvest was taking place. While armfuls of corn, cut by the sharp sickles, were falling in rows along the swathes and others were being bound by the sheaf-binders in twisted bands of straw, "henchmen apart beneath an oak were making ready a feast and preparing a great ox they had sacrificed".¹ This scene is doubtless—as the scholiast remarks²—a reference to the ancient Athenian festival of the Diipolia, where an offering of grain was accompanied by the slaying of an ox. Let us briefly review the evidence about this little-known festival and its probable origin and meaning.

In his description of the monuments on the Acropolis, Pausanias mentions an image of Zeus by Leochares and another of the same god surnamed Polieus with an altar as standing together.³ He then briefly describes the curious ritual of Zeus

¹ Iliad, 18. 558-9.

² On Il. 18. 483: *καὶ βοῦν φησι* (Homer) *θύεσθαι· ἐκεῖσε* (i. e. Attica) *γὰρ πρῶτος ἔθυσσε βοῦν θαύλων φυγαδευθείς*. J. Töpffer, *Attische Genealogie*, p. 155, first called attention to this scholion.

³ I. 24. 4. An archaic figure of Zeus in the act of hurling the thunderbolt appears on Athenian coins (e.g. Overbeck, *Kunstmythologie*, II, 19 fig. 4: Imhoof-Blumer and Gardner, *Numismatic Comm. on Paus.* Pl. BB. 1.), which O. Jahn believed was a copy of the statue of Zeus Polieus, because in attitude it resembles what is considered to have been that of the kindred statue of Athena Polias mentioned by Paus. i. 26. 6; see *Nouv. Mem. d. Inst.*, p. 24. The latter was of wood (Plutarch, *de daedalis Plataeensis* 5, p. 20 (Didot), and Apollodorus, III, 14. 6; of olive according to Schol. on Demosth. 22, 13, and Athenagoras, *Suppl. pro Christianis* 17) and almost a shapeless log (Tertullian, *Apologet.* 16) and very ancient (Philostratus, *Vita Apoll.* III, 14), having been set up by the aborigines (Plut. l. c.) or Cecrops (Euseb. *Praep. evang.* X, 9. 15.) or Erichthonius (Apollod. l. c.); on its form see Jahn, *De antiquiss. Minervae simulacris Atticis*, p. 10 sq. Jahn believed the

Polieus. Barley mixed with wheat was placed upon the altar, and an ox, which was kept in readiness, went up to it and ate of the grain. Whereupon the ox was slain by a priest known as the "ox-murderer" (*βουφόνος*), who immediately threw away his axe and fled as if guilty of murder. The citizens, pretending they did not know who had done the deed, brought the axe to trial. In a later passage, in speaking of the Athenian courts of homicide, Pausanias seems to indicate that this trial took place at the Prytaneum, where lifeless things were brought before the bar of justice, a custom which he says goes back to the age of Erechtheus, when the "ox-murderer" for the first time slew an ox.¹

Porphry gives us an account of the ritual of Zeus Polieus which seems to have been taken almost verbatim from a lost work of Theophrastus. Whereas the scholiast on the Homeric passage mentioned gives the name of the first slayer as Thaulon, Porphyry in one passage² gives it as Diomus, the priest of Zeus Polieus, while in another³ he recounts a divergent story in which the name is Sopatros. His account of the origin of the strange ritual is that a certain Attic farmer, an alien, was one day sacrificing during a general festival, when an ox, on returning from labor, devoured some of the sacred barley cakes (*ψαισά*) and mixture of meal, honey and oil (*πέλανος*) laid out on a table for sacrifice, and trampled on the rest. In anger Sopatros slew the ox and, after burying it, fled to Crete. A drought visited Attica and the Delphian oracle advised the

similar coin type of later age (e. g. Overbeck, II, 19 and 54, § 7; Imhoof-Blumer and Gardner, p. 137 sq. and Pl. BB. I, II, III; cf. Harrison, *Anc. Athens*, p. 423 sq.) was a copy of the Zeus of Leochares, reproducing in modernized manner the archaic image of Zeus Polieus, and that the altar represented on this type might be the one mentioned by Pausanias; but Overbeck, l. c., doubts if the earlier coin type represents the Polieus, though, on account of the altar, he believes the later type represents the Zeus of Leochares. E. de Chanot (*Gaz. archéol.* VI, 1880, 79-82 and Pl. II) has brought a bronze statuette at Lyons into connection with the statue of Polieus; cf. Overbeck, *Griech. Plast.*⁴, II, p. 93.

¹ I. 28. 10.

² *De Abstinencia*, II, 10.

³ *Op. cit.* II, 29; cf. J. Bernays' reconstruction from Porphyry of Theophrastus' work *περὶ εὐσεβείας*: Theophrastus' *Schrift über Frömmigkeit*, Berlin, 1866, p. 122. In the MS it reads *Δίωμον ἢ Σώπατρον τινα*, but in Porphyry's source it can have referred only to the latter; see Bernays, *ibid.*

Athenians thus: "If you punish the murderer and set up the ox in the place where he fell, it will benefit both those who have tasted of its flesh and those who have not concealed the murderer". The man was found and, believing he would be absolved from guilt only by getting all the rest to share in the crime by doing the same thing, advised that the city slay another ox in common. He volunteered to do the slaying if he were made a fellow-citizen. This was done and thus was instituted the ritual of the "ox-murder" (*τὰ βομφόνια*), which kept up to a late period as the chief act in the drama of the Diipolia or festival of Zeus Polieus.

In the next chapter Porphyry describes the first celebration of this festival. Maidens, called water-carriers, were appointed to bring water to sharpen the axe and the knife. One man handed the instruments to two butchers, one of whom felled with his axe that one of the oxen among those driven round the altar which tasted of the offerings, while the other with the knife cut its throat. Then the ox was flayed and all partook of the flesh. The next act in the strange drama was to stuff the hide with grass, sew it together and set it up like a live ox yoked to a plough. Then a trial was instituted and the various persons implicated in the murder were successively charged with the crime. "But since the water-carriers accused the sharpeners as more culpable, and these accused the one who gave over the axe, and he accused [the one who struck the ox, who in turn accused] the one who cut its throat, and the latter the knife, hence, as the knife could not speak, it was condemned as the murderer". From that ancient time down to his day Porphyry says an ox was offered in the same wise at the Diipolia: the customary cakes and mixture were placed on a bronze table, oxen were driven around, and the one which ate of the cereals was slain. He adds that the families (*γένη*) of those concerned with the first sacrifice were still in existence. From the man who struck the animal the so-called "ox-strikers" (*βουτύπτοι*) were descended: from him who drove the oxen around the altar came the "stimulators" (*κεντριάδαι*), while from him who cut the throats of the first ox were descended the "dividers" (*δαιτροί*), so named because they distributed the flesh, at the banquet (*δαίς*). When the judicial process was ended the knife was cast into the sea. In this way

the oracle's bidding was carried out; all had tasted of the flesh, the murderer, i. e. the axe, was punished, and the dead was raised to life.

Aelian also briefly mentions the Attic custom according to which, when an ox is slain, the Athenians try each in turn on the charge of murder, but condemn the knife as the real instrument of the slaying.¹ He adds that the day on which this is done they celebrate a festival called the Diipolia and Buphonia.

Though several things about this very ancient festival are dark, and the sources of our knowledge are not completely in harmony,² we know that the sacrifice thus described was particularly known at Athens as the Buphonia and that it was the chief act in the festival of Zeus Polieus called the Diipolia.³ This civic-religious cult of Zeus was less prominent in Athens than that of Athena Polias—with which it was partly associated—though it was spread widely over the Greek world.⁴ The

¹ Var. Hist. VIII. 3.

² As indicated in the text some of the links in the process of recrimination are omitted by Theophrastus. Pausanias states it was the axe and not the knife which was tried, whereas both Theophrastus and Aelian state it was the knife. Theophrastus shows there were two men who carried out the slaying, the "axe-man" and the "knife-man", and that the former blamed the latter so that finally the knife was condemned. Though no writer says both implements were tried, perhaps both were condemned and thrown into the sea. Furthermore, Pausanias mentions an altar, while Theophrastus mentions a bronze table; perhaps an iron plate was laid on the altar of Zeus Hypatos at first—for blood sacrifices were there forbidden. On the variation in the evidence see A. Mommsen, *Feste der Stadt Athen im Altertum*, Leipsic, 1898, p. 517 sq.

³ The forms of the name vary; thus we have *Διπόλια* (C. I. A. IV, i. 555, Aristophanes, *Nubes*, 984), *Διπόλια* (Antiphon, *Tetral.* 2, 8, 8) and *Διπόλεια* (Aristoph. *Pax* 420); in later writers other forms occur as e. g. *Διοσπόλια* (Porphyry, II, 30). The name is manifestly derived from Zeus Polieus; cf. Hesychius, s. v. *Διπόλεια*. For references in Greek literature to the *Διπόλεια* and *Βουφόνια* (sc. *ιερά*) see Jahn-Michaelis, *Arx Athenarum*, notes to pp. 52–3; and Töpffer, *op. cit.*, 149 sq.

⁴ From inscriptional evidence, Farnell, in his *Cults of the Greek States*, I (1898), p. 161, n. 107, n-s, shows it was in vogue in such widely separated communities as Paphos in Cyprus (C. I. G. 2640), Sardis in Lydia (C. I. G. 3461), Ilium (C. I. G. 3599), Ios in the Aegean (Ath. Mitth. 1891, p. 172), Rhodes (Rev. Arch. 1866, p. 354) and Physcus in Caria (Bull. corr. hell. 1894, p. 31). The cult of Zeus Polieus must be dis-

variation in the evidence can be partly explained, perhaps, by assuming with Mommsen¹ that formerly the festival was held not only within the city limits but also outside. As the usages of the ceremony were taken largely from tillage, it must have been at first a country festival. So Porphyry says Sopatros was an Attic farmer and that he slew the ox during a festival at Athens (*Ἀθήνησιν*), which may mean anywhere in Attic territory, and consequently, perhaps, on his own farm, where as husbandman, he would naturally sacrifice to the weather-god Zeus.² Similarly the Homeric passage cited pictures a sacrifice at one side of a corn-field, far from a city. In course of time it would be brought into the city and the chief place of the celebration would be the Acropolis,³ at first probably at the ancient altar of Zeus Hypatos,⁴ but later near the statue of Zeus Polieus. Perhaps the difference in name—Aelian is the only writer who uses the two interchangeably—points to the double origin; the *βουφόνια* would refer to the country sacrifice, while the *Διπόλεια* would refer to the urban.⁵ Just as Zeus and Athena were worshipped together at the festival of the Disoteria at Athens, the connection of which with the Diipolia is recog-

tinguished from that of Zeus *Πατρῶος* as it does not connote the bond of kinship, but the union of the state; the cult of Zeus *Πάνδημος*, which expressed the political union of the state also, was late and is known to us through an inscription of Hadrian's time (C. I. A. III, 7), and imperial coins of the Phrygian town of Synnada; see Head, *Historia Nummorum* (ed. 1911), p. 686, and cf. Farnell, p. 56 and n. 1.

¹ Feste, p. 517 (and n. 1) sq.

² Op. cit. II, 29.

³ As Pausanias, Porphyry and Suidas (s. v. *Βουφόνια*) say.

⁴ Paus. I. 26. 5 says this altar stood in front of the entrance to the Erechtheum and that no living thing was there sacrificed; cf. also Eusebius, *Praep. evang.* X. 9. 15; on its location see Lolling, *Topogr.* p. 347, 1. It has also been assumed that the festival took place on the Pnyx, because of a votive inscription found there [*Δὲ ὑψ*][*ιστ*][*φ εὐ*][*χῆ*]; see Curtius, *Attische Studien*, I, p. 27, but there is no proof that this cult was ancient; cf. Lolling, 331, 1.

⁵ Cf. Mommsen, 517, n. 1. The festival was also confounded with the *Diasia* (*τὰ Διάσια*), the festival of Zeus Meilichios held on the 22d or 23d of Anthesterion; see Schol. on Aristoph. *Nubes* 408 and 984: Bekker, *Anecd. gr.* 91, 8-9. The latter says Thucydides calls the festival by that name; but the historian, I, 126, speaks of the festival of Zeus Meilichios, which had nothing to do with the Diipolia.

nized,¹ there is also evidence to show that both divinities were united in some degree in the city ceremony of the Diipolia.² While in the country a sacrifice to the weather-god alone would be sufficient, it was natural, after the festival was brought into the city, that the "Guardian" Athena should be honored at the same time as the "Guardian" Zeus at the latter's altar on the Acropolis.³ The chief actor at the city celebration seems to have been the "ox-slayer" (*βουφόνος* or *βουτύπος*), the priest who annually performed the traditional rôle of Sopatros.⁴ For centuries these priests were chosen from the Attic family of the Thaulonidae, who traced descent from a mythical Thaulon, the first ox-slayer.⁵

¹ It was founded about 480 B. C.: see C. I. A. II, 1. 305, 1. 10: II, 1. 325; for the younger festival of the same name at Piræus see II, 141. 4 and IV, 2. 373 c; cf. Mommsen, *Feste*, 524 sq. It took place probably at the stoa of Zeus Eleutherios in the agora; see Wachsmuth, *Stadt Athen*, II, 425; cf. citations from Hesychius, 524. 3. Böckh (app. C. I. G. I, p. 251) believed the offering to Zeus Soter was made on the same day as that to Zeus Polieus; this view is found reasonable by Mommsen, pp. 526-7, who dates the Disoteria somewhere between the 20th of Thargelion and the 21st of Scirophorion. That Athena and Zeus, the divinities of the Disoteria, also took part in the Diipolia strengthens Böckh's opinion, and the coincidence in the dates of the two festivals leads to the conclusion that many oxen were slain at the *Βουφόνια*, as is stated by the Etym. Magn. s. v. *βουφόνια*, and Bekker, op. cit. 221, 2-3; in other words the many oxen were slain on the day (*ἐν ταύτῃ τῇ ἡμέρᾳ*) of the Diipolia, not as offerings to Zeus Polieus, but to Zeus Soter and Athena Soteira. After the ox was slain on the Acropolis at the Diipolia, the people moved down to the Prytaneum for the sacrificial meal, and thence to the stoa of Zeus in the agora below.

² Thus in the Venetus MS. of Aristophanes' *Nubes*, 985, we have after the words *καὶ Βουφονίων* the memorandum *ἐορτὴ ἔτι παρὰ Ἀθηναίοις ἐπιτελουμένη τῇ Ἀθηνᾷ*, which words show Athena's connection: Hesychius, p. 426 (s. v. *Διὸς θᾶκοι καὶ πεσσοί*), says also that when Athena and Poseidon were striving for the land of Attica, the former promised Zeus for his vote in her favor to sacrifice the first offering on the altar of Zeus Polieus.

³ Leake placed the altar of Zeus Polieus at the western end of the Parthenon, Beulé at the eastern; now it is generally believed to have stood at the eastern end, perhaps a little to the north; see Milchhöfer, *Schriftquellen zur Topographie von Athen* (Curtius, *Stadtgesch. von Athen*, p. XLIII, 48-9); and cf. Frazer, *Pausanias*, II, p. 303.

⁴ Cf. Bekker, op. cit. 221, 1; the other two performers seem to have been secondary figures.

⁵ As already remarked, the name Sopatros comes from a source only

The festival of the Diipolia in course of time became antiquated in Athens. By the time of Aristophanes it appeared to be as much out of harmony with the taste of the day as the golden cicadae which the old Athenians used to wear.¹ Several pre-Euclidean inscriptions show that it still existed to the end of the fifth century.² The priest of Zeus Polieus had a seat in the theater of Dionysus to the left of the god's priest.³ But we hear nothing of the festival in the fourth, third, second or first centuries B. C. First again under Roman dominion, when the old and antiquated were in special favor, we learn of it being solemnized in the days of Pausanias and Porphyry. Whether we are to conclude that in these middle centuries the ceremony entirely ceased or was continued, though ignored and despised, we cannot say. The later richer customs of the worship of Zeus had contributed their part to the public taste

handed down by Theophrastus. For the Thaulonidae, see Schol. on Aristoph. *Nubes* 985; Suidas, s. v. *Θαύλων*; Hesychius *Θαυλωνίδαι*, *Βουτύπος* and *Βούτης*. Hesychius confounds *βουθύτης*, "ox-sacrificer" (cf. Suidas, s. v. *βουθύτης*; Athenaeus 660A; Sophocles, *Oed. Col.* 888), with the Athenian hero *Βούτης*, neatherd priest of Athena and Poseidon and ancestor of the priestly caste of the *Βουτάδαι* and *Ἐτεοβουτάδαι* (cf. Apollod. III, 15, 1; Paus. I. 26. 5; Ps.-Plut., *Vit. Lycurg.* orat. p. 843 e [*Lycurgus* was an *Eteobutad*]; Aeschin. II, 147; Harpocrat. and Phot., s. v. *Ἐτεοβουτάδαι*; C. I. A. III, 2. 302 "*ιερέως βούτου*", which may refer to the priest or the hero or only be a title). The *Βουτάδαι* can have had nothing to do with the *Βουφόνια* or *Βουτύποι*, as Hesychius affirms: see Töpffer (on basis of Suidas, s. v. *Βούτης*), p. 158; Mommsen, pp. 520-2; etc. Photius (s. v. *Κεντριάδαι*) says these latter were *πατριὰ Κηρύκων*, i. e. one of the branches of the great priestly family of the Ceryces at Athens (cf. Andoc. 15. 28; Paus. I. 38. 3; Pollux, VIII, 103; Photius, s. v. *Κηρυκίδαι* and see Töpffer, p. 151). Clidemus (= Clitodemus of Paus. 10. 15. 5), an old Attic historian, quoted by Athenaeus 660 A, says the *βουτύποι* and *μάγειροι* (= probably the *δαιτροί* of the Diipolia) belonged to the Ceryces; perhaps the *Κήρυκες* of the Homeric passage quoted (II. 18, 558; cf. schol. = *Ἀθηναῖοι δὲ καὶ νῦν τοὺς περὶ ἱερουργίαν πονουμένους κήρυκας φασιν*) also belonged to them. For an explanation of the variation in names, see Töpffer; he believes the chief actor (*βουφόνος*) was from Thaulon's race, while the *βουτύπος* was a secondary figure and came from the Ceryces; Mommsen, p. 521, sees no reason for making two persons out of these titles.

¹ *Nubes*, 984-5: *ἀρχαῖά γε καὶ Διπολιώδῃ καὶ τεττίγων ἀνάμυστα*, κ. τ. λ.

² C. I. A. I, 149; II, 649, l. 12; 652, l. 48; 660, l. 22-23; IV, l. 555a.

³ C. I. A. III, 242.

and so the archaic festival of the Diipolia must have lost in prestige, at a time when the splendid pomp of such festivals as the Disoteria¹ was more agreeable to the people than these old-fashioned rites.

If we seek an explanation of the strange rites of the Diipolia, we must go far back into the domain of primitive ideas which everywhere form the background of early ritual. And, as we shall see, it is only in recent years that light has been thrown upon the ideas which are at the base of this curious drama. The account of Pausanias is incomplete and he makes no effort to explain what he certainly did not understand. The story of Porphyry is frankly aetiological and of little value beyond pointing to a remote antiquity for the origin of the festival. He seems to have regarded it—to quote from Farnell—“as a mystic allusion to the guilty institution of a bloody sacrifice, and to the falling away of mankind from a pristine state of innocence, when animal life was sacred and when the offerings to the gods were harmless cereals or vegetable oblations”—in short “the explanation of a vegetarian defending a thesis”.² His mistake seems to have been due to the popular notion, already long before inculcated in the poems of Hesiod, of a Golden Age, when men were content to live on the earth's fruits and had not yet learned to shed blood; also in part to an effort to explain some of the features in the ritual of animal sacrifice, e. g., the acknowledgement of guilt on the part of the slayer.

Various explanations of the ritual of the Diipolia have been advanced in recent years. Mommsen,³ chiefly on the basis of two passages in Pausanias, places the origin of the festival on the borderland between two periods: the Cecropian, when grain and cakes instead of blood sacrifices were offered on a bronze table on the Acropolis,⁴ and that of Erechtheus, who disturbed

¹ Inscriptions tell us the amount of money spent on this festival; thus C. I. A. I, 157 (for Olympiad CXI, 3) states that 1050 drachmae were expended for Zeus Soter; C. I. A. II, 842, gives 2610 drachmae: later inscriptions show the ephebi had to do with it.

² *Cults*, I, p. 88.

³ *Feste*, p. 512 sq.: his theory first appeared in his *Heortologie*, 1864, pp. 449-54.

⁴ 8. 2. 3; cf. I. 26. 5; he believes they were offered on the altar of Zeus Hypatos whose bloodless ritual was instituted by Cecrops. Other such bloodless altars are mentioned; thus Porphyry, II, ch. 27, says

the innocence of an earlier time by sacrificing an ox at the altar of Zeus Polieus.¹ During the earlier stage the slaying of an ox was a sin and so the Buphonia was literally an "ox-murder", which he thinks explains the slayer's flight and the subsequent process to find out who was to blame.² As the festival fell during the last full moon of the Attic year (on the fourteenth of the month Scirophorion³), i. e. the end of June or the beginning of July, its celebration would correspond with the threshing season in Attica.⁴ Hence Mommsen concludes that the Diipolia was merely a threshing festival. At this date now the corn-harvesting is already advanced and the cut ears lie on the threshing floors to be trampled out by oxen which are driven about. Unless their mouths are bound the oxen will devour the grain, the very thing which they are said to have done in the days of Sopatros. Thus, apart from thanksgiving, the purpose of the festival was to implore favorable weather conditions for the threshing and winnowing, and as Zeus was the god of the weather, it was primarily dedicated to him.⁵

This reasoning of Mommsen is by no means convincing. The fact that the festival fell about the end of the Attic harvest certainly shows that it was in some wise connected with tillage, as a harvest commemoration, but it does not explain the strangeness of the ritual. Nor is the view of K. Bötticher any more convincing, who, following the explanation of Theophrastus, believed that the change from the sacrifice of

anciently men neither ate nor sacrificed animals; and in ch. 28 names an "altar of the Pious" at Delos where no animals were slain; cf. also Plato, Laws, VI, 782 C and Lobeck, Aglaophamus, p. 245 sq.

¹ I, 28, 10.

² Cf. Schol. on Il. 7, 466 (on *'βουφόνεον*): *βουφονεῖν ἐστὶν οὐ τὸ θύειν θεοῖς· ἀτοπον γὰρ ἐπὶ θυσίας φόνον λέγειν· ἀλλὰ τὸ φονεύειν βοῦς εἰς δείπνον παρασκευήν.*

³ Schol. Aristoph. Pax, 419: Etymol. Magn. s. v. *βουφόνια*. On the 16th, according to Bekker, 238, 22-3. Similarly until recently it was held that the Olympic games in honor of Zeus fell during the first full moon after the summer solstice, i. e. about July 1st. Recent writers place them after the second full moon, i. e. the end of July or beginning of August; Unger, Philol. XXXIII (1874), p. 227 sq.; A. Mommsen, Ueber die Zeit der Olympien, Leipsic, 1891.

⁴ Mannhardt, Mytholog. Forsch. p. 68.

⁵ Feste, 522-3; cf. 12-13.

fruits and cereals to that of animals was an innovation tremendous enough to explain the guilt of the slayer, the trial of the axe and the entire ritual.¹ It must be admitted that we do find, both in the ritual of Zeus and other divinities,² the occasional distinction between bloodless offerings and sacrifices which shed a victim's blood. Thus Pausanias says only cakes and neither animals nor wine were allowed on the altar of Zeus Hypatos³ on the Acropolis, but he also says a human babe was sacrificed on the altar of Lycaean Zeus at Lycosura in Arcadia.⁴ Wineless sacrifices were only innocent in the sense that they excluded animals,⁵ and they were offered not only to Zeus Γεωργός, the god of agriculture, but to other divinities, including Aphrodite Ourania and Dionysus.⁶ Such sacrifices could not therefore have been associated with the oldest period, as Theophrastus would have us believe, for the two divinities just mentioned were not primitive Greek.

W. Robertson Smith was the first to emphasize that in Greek as well as Semitic religions, we must distinguish between the offerings of the first fruits of the harvest placed on an altar as tribute, and the sacrifice at which—by means of a common sacrificial meal—the whole tribe was brought into union with its god.⁷ His contention that the latter was the earlier custom is probably right, if for no other reason than that the agricultural follows the nomadic period. Down to the close of Greek religion animal sacrifices formed the chief feature of the ritual of Zeus and so no reform, like that hinted at by Theophrastus, ever took place. Zeus always remained the

¹ Philol. Suppl. Bd. III (1878), pp. 351 sq.: cf. Philol. XXII, p. 262 sq. Bötticher's contention is that the tradition of Pausanias is true that blood sacrifice first appeared in Athens in the regal period; that the new sacrum was added to the Diipolia with the introduction of the cult of Athena, who first sacrificed an ox, though before neither steer nor plough-ox is mentioned in her cult: cf. Arnobius, VII. 22 and Crestus, ap. Fulgentium, Exposit. Serm. Antiq., p. 561: also II. 6, 308-9; 10, 292; Od. 2, 550.

² e. g. Apollo on Delos: see Diog. Laert. 8. 13.

³ 1. 26. 5.

⁴ 8. 2. 3.

⁵ Plutarch, Symp. Quaest. 4. 6. 2, identifies them with μελισπονδα or "honey libations".

⁶ Farnell, Cults, I, p. 88.

⁷ Religion of the Semites, 2 (1894), 218-227.

"cutter up of entrails" (*σπλαγχνοτόμος*)¹ and a "feaster" (*εὐλαπιναστής*).² Doubtless occasional bloodless sacrifices to Zeus would appear to some of the higher natures of the Greeks as a more spiritual conception of sacrifice and a purer form of ritual, but so far as we know the ritual remained practically unchanged to the end of paganism.³

Scientific theories of sacrifice are very recent, dating only from the second half of the last century, and originated in the first instance with the English school of anthropologists. Let us, therefore, very briefly review the theories of sacrifice and their bearing on the buphonia advanced by the three recent English investigators of primitive religious beliefs, Robertson Smith, Frazer and Farnell.

Robertson Smith tried to explain the mysterious rites by the survival of early totemistic ideas, i. e. the belief in an animal ancestor of a clan or of tribal kinship with a sacred animal. Whereas Tyler had maintained that sacrifice was originally merely a gift offered the gods by men to win their favor and curb their enmity—the gift slowly becoming transformed into one of homage, which in turn became one of renunciation, Smith, on the basis of the recently recognized existence of totemism, distinguished three types—the honorific, piacular and mystic. The essential feature of the first was that the god and worshippers shared in the sacrifice and so became commensals or table companions, the sacrificial meal renewing the bond between them and the victim which originally was the animal of a hostile totem-kin: the second arose from the need of atoning for bloodshed within the kinship group, where the culprit, if found, was punished, and if not, a substitute, i. e. the non-human member of the totem-kin, the totem animal: in the third, traced back to the same cycle of ideas as the second, the god himself is slain and eaten by the worshippers.⁴ In his theory later remodeled to meet objections raised, he made god, victim and human group all of one kin, and the animal or totem

¹ Athenaeus, 147 A.

² This was his name in Cyprus; Athen. 174 A. In the Iliad this is the name given to Hector's friend Podes; 17, 577.

³ Human sacrifice lingered on in certain parts of the Roman empire down to Hadrian's age: cf. Porphyry, II, 54-7.

⁴ See article "Sacrifice", Encycl. Britannica, 9th ed.

the earlier form of the god, and the sacrifice originally a communion in which god and worshippers have a bond of kinship; from this communal sacrifice piacular sacrifices grew, explained by the idea of the mystic union of god and worshippers. In short the essential feature of his reasoning is that a group claims kindred with an animal god or a sacred animal, from whose flesh the group abstained except on certain ceremonial occasions when it is eaten to strengthen the tie of kinship. In applying his theory to the buphonia,¹ he emphasized, as Bötticher had done, the literal meaning of the word *βουφόνια*, the sense of guilt which rested on the slayers in the efforts of all concerned to shift the blame, the exile of the priest who dealt the blow, and the legend (in Theophrastus) which connected these rites with the admission of a stranger into the community, and the subsequent trial of the axe. He concludes that the ox was a sacred animal or totem, whose slaying was sacrilegious—a divine animal akin to the clan, so that the buphonia is a reminiscence of a primitive age when oxen—and perhaps all herds—were sacred.² Similar rituals to that of

¹ Relig. of the Semites, p. 304 sq.

N. W. Thomas, in his article on Sacrifice, in the *Britannica* (11th edition), has combated the commensal doctrine of Smith, denying it was a primitive right of adoption. He believes the custom of eating the victim's body does not necessarily spring from any idea of communion with the god, for it may arise from a desire to incorporate sanctity which has been imparted to it—which is based on the idea that eating anything causes its qualities to pass into the eater. When the victim—like the corn-spirit—is an animal especially associated with the god, the god may be said to be eaten, though even here there is no indication of giving a portion of the victim to the god.

² According to classical writers the plough-ox could not be slaughtered because he was himself an agriculturist and so a companion to the laborer at his work; so Ael. V, 14; Varro, *de re rust.* II, 5, 3. Both Varro, § 4, and Columella, *de re rust.* c. VI. Praef. 7, state that the slaying of an ox was prohibited at Athens on pain of death. Frazer, Pausanias, II, p. 304, thinks these statements were inferred from the ritual of the buphonia; but they were more probably merely reminiscences of an older period when such animals were sacred. Herodotus says the Libyans and Egyptians abstained from cow's meat though they sacrificed bulls; IV, 186; cf. II, 41; a similar statement is made for Phoenicia by Porphyry, *de abstinentia*, II, 11. Pliny says the slaughter of a laboring ox in Rome in the early days was punished with excommunication: H. N. 8, 70. The old idea has survived in some parts

the Diipolia existed in other parts of Greece, e. g. the sacrifices to the Syrian goddess described by the pseudo-Lucian,¹ and the worship of Zeus Lycaeus in Arcadia already mentioned.²

Frazer's views of sacrifice, though partly based on those of Smith, are somewhat different. He does not believe it has been proved that totemism ever existed among the Greeks or any of the Aryan peoples. He believes a truer explanation of the buphonia is to assume with Mannhardt³ that the ox, instead of being a totem animal, was a vegetarian spirit. He thinks the festival must have been a harvest one, as the ritual of placing fruits and barley on an altar is in harmony with such a feast, as is also the sacramental character of the repast of which all partook, exactly as is done in modern Europe. The traditional origin of the feast—to avert sterility—also points to the same conclusion. His view of sacrifice is, that while the sacrifice of the god may have been piacular, it was also intended to preserve his divine life against decay of age. He exemplifies his theory by two sorts of cases; first the slaying of the man-god which is frequently the king; secondly the annual slaying of the representative of the spirit of vegetation, or corn-spirit. He finds the explanation of the buphonia in the latter sort. The mode of selecting the victim suggests that the ox which tasted the corn was looked upon as a corn deity, whose flesh was ceremonially eaten, and which was slain at the end of the harvest only to rise again with increased powers of production. The setting up of the stuffed hide and the yoking to the plough are comparable to the resurrection of the tree-spirit in the person of its representative.⁴

of Greece into modern times; see G. Mariti, *Travels through Cyprus, Syria and Palestine* (1791-2) I, 35.

¹ *De dea Syria*, 58: in these rites the worshippers sacrificed by throwing animals from the top of the propylaea of the goddess's temple and even cast down their own children, "calling them oxen".

² Cf. Farnell, p. 92: he sees in this Zeus the "Wolf-God" of a wolf-clan, i. e. the Lycaonids, in whose legends human sacrifice and lycanthropy were prominent.

³ *Op. cit.* pp. 58 sq.

⁴ *Golden Bough*² 295 sq.: cf. Pausanias II, 304. On pages 295-6 he cites a similar custom of our day at Beauce, France, where on the 24-5th of April of each year the peasants make a straw man (called the "Great Mondard") in the belief that the old one is dead. It is carried

Ingenious as Frazer's theory is in explaining many features of the buphonia, it is not satisfactory. He has gathered evidence to prove that many primitive peoples look upon the ox as a vegetation divinity, and he even mentions a present-day Chinese custom of making an effigy of an ox stuffed with grain, which is an almost exact duplicate of the Athenian custom; and he has given proof of the religio-political significance of the ox in Attic worship, especially in the cult of Zeus.¹ And without reference to totemism he explains how a primitive tribe may look upon an animal as divine, conciliate it and make reparation for slaying it, e. g. to avoid a blood-feud with its kindred. But his solution hardly explains why the slaying of the first ox at Athens should have aroused so deep a sense of guilt, when no such feeling is evidenced elsewhere in the slaying of the corn-spirit. It certainly does not explain the flight of the slayer nor the trial of the axe.

Farnell² agrees with Smith that a survival of totemism—which he looks upon as only a special form of the larger fallacy peculiar to primitive men of endowing animals with human characteristics—best explains the ritual of the buphonia. The feeling of guilt on the part of the slayer is explained by assuming that the ox was regarded as being of the same kindred as the worshippers: thus he would have felt the same sense of guilt as if he had slain one of his own kindred and so would have gone into voluntary exile. He believes this assumption is confirmed by that part of the legend which made the admission of Sopatros into citizenship dependent upon his eating of the flesh of the ox with the other citizens at the sacrificial feast;

in procession through the town and hung on the oldest apple-tree until the apples are gathered, when it is burned or cast into the river. The man who plucks the first fruits of the tree becomes the "great Mondard" or representative of the tree-spirit. He explains this curious custom on the ground that primitive folk fear to taste the first fruits of a crop until a ceremony has made it pious to do so, since they belong to a divinity; whoever dares to take them is the god in human form.

¹ Two inscriptions, C. I. A. III, 71 and 273, show that the Zeus of the Palladium homicide court was served by a priest called *βουζύγης*—"yoker of oxen". We know the bull and the ram were the chief victims sacrificed to Zeus.

² Cults, Appendix to ch. IV, pp. 88 sq.

for thereby he became of one flesh with them. To harmonize this theory with that of Frazer, we must suppose that in this case the deity of vegetation—personified as an ox—had been taken as a totem by an agricultural tribe. We have already seen that the festival indicates that Zeus originally was an agricultural deity. Both Smith and Frazer have collected evidence to show the primitive custom of slaying the god in the form of a divine animal and the eating of its flesh. Hartland also, in his *Legend of Perseus*,¹ believes that when a religious community is at the same time a family, clan or tribe in early society, each member of the kin testifies and renews his union with the rest by taking part in a sacrificial meal in which the totem god is eaten by the worshippers. Frazer, however, believes that no satisfactory evidence has been adduced in support of this theory, and so rejects the totemistic solution.² If the Greeks ever based their society on totemism—which Frazer denies—Farnell admits they had left that stage far behind before the historic period,³ but he believes the traces of an institution which has long disappeared can be found both in legends and ritual, and thus concludes: "When we find indications that the animal that is venerated and occasionally sacrificed, is regarded as akin to the worshipper, the survival of totemism here is the only hypothesis that seems to provide a reasonable key to the puzzle".⁴ Whether the ultimate solution of the buphonia is to be found in totemism or some other primitive fact, Farnell believes that certain traces of the "theanthropic"⁵ animal are well attested in the ritual of Zeus.

¹ (1894-6), II, 236.

² Westermarck also follows Frazer's idea: *Origin and Development of Moral Ideas*, II (1908), pp. 210-11.

³ Descent through females, a fact generally found with totemism, also cannot be proved to have existed anywhere in Greece, though certain legends seem to point to it.

⁴ P. 92.

⁵ i. e. the semi-divine, semi-human sacrificial animal; the term was coined by Robertson Smith. Farnell, pp. 93 sq., cites several examples of ritual stories in Greece, in which animals were substituted for human victims, and explains these as probably arising from the deceptive appearance of many sacrifices where the victim was treated as human. Thus the legend of Athamas and Zeus Laphystius (see Hdt. VII, 197) illustrated the double view of human sacrifice, the confusion between human and animal offerings. This same blend characterized the Diipolia.

Our knowledge of the whole subject of totemism in Greece is still too meager for us authoritatively to explain all the details in the ritual of the buphonia. All we can say with certainty is that this ritual was in some way connected with agrarian rites, and with probability that it had some form of totemism behind it. It seems to show that the early community which centered around the Acropolis believed it was mystically maintained by eating an ox as a sacrament, in which ox, god and worshippers were akin. Slowly the special deity of an agricultural ox-clan grew to become the god of the State.

The first act in the drama of the Diipolia, then, was the buphonia or slaying of the ox, which took place at the altar of Zeus Polieus on the Acropolis. The second act was the ceremonial trial of the axe, which was enacted at the Prytaneum; and here also in all probability occurred the third act—the common sacrificial meal. It was doubtless at this feast that the silver drinking cup (*καρχήσιον ἀργυροῦν*) of Zeus Polieus, mentioned in inscriptions as among the treasures kept in the Parthenon, was used.¹ This brings us to a discussion of the Prytaneum and the trials of animals and inanimate things held there all through classical antiquity; and it will be our task to see if there is any truth in the tradition handed down by Pausanias that these legal processes had their origin in the trial of the axe used by the first ox-slayer.

The Prytaneum, as is well known, was simply the Hôtel de Ville of Athens as of every Greek town.² In it was the common hearth of the city,³ which represented the unity and vitality of the community. From its perpetual fire (*πῦρ ἄσβεστον*),⁴ colonists carried sparks to their new homes as a symbol of fealty⁵ and here in early times the chieftain or *πρύτανις* probably dwelt. In the synoecism of Theseus the prytanea of the separate communities of Attica were joined in a central one at Athens as a

¹ C. I. A. I, 154, 1. 7: II, 649; 652; 660; for other sacrificial utensils see C. I. G. 140, 141, 150: etc.

² On the Prytanea in general, see Hagemann, *De Graecorum prytaneis*, Vratislaviae, 1881; Frazer, *Journ. Philol.* XIV (1885), pp. 145 sq.

³ Aristotle, *Polit.* VI, 8 p. 1322 b 28; Plut. *Quaest. conviv.* VI, 8. 1; Pollux, I, 7 and IX, 40; C. I. A. II, 467, 1. 6; etc.

⁴ Cf. Aristotle, 1. c.; C. I. A., 1. c.; and Plut. *Numa* 9.

⁵ Schol. on Aristides, III, p. 48: Etym. Magn. p. 694, s. v. *πρυτανεία*.

sign of their union.¹ It was here that the images of Eirene and Hestia stood;² foreign ambassadors, famous citizens, strangers and athletes were entertained here,³ and in the same building the laws of Solon were displayed,⁴ and before Draco's day the archon eponymus used it as a dwelling.⁵ The site of the Prytaneum, and so of the court under discussion, is not definitely settled. It is generally supposed that in the lapse of centuries several buildings bore the name.

Many believe the original Prytaneum of the royal period must have been on the Acropolis. Certainly in the time of Pausanias it was near the Agraulium on the north slope of the Acropolis, a little to the east.⁶ In recent years Ernst Curtius has propounded a theory that the earliest Prytaneum, containing the hearth of Athens, was in the King's palace on the Acropolis which was the earliest center of public life, where the King sacrificed and the people assembled.⁷ Though Hestia always

¹ Thucyd. 2. 15; cf. Plut. Theseus, 24.

² Paus. 1. 18. 3; cf. Pseudo-Plut. Vit. X Orat. p. 847 D.

³ Aristoph. Acharn. 124 sq.; Equites 709 (and Schol. on 167); Demosth. 7. 20; Poll. IX, 40; cf. Plato, Apol. 36. The stewards of the Panathenaic games had meals here during the festival; Aristotle, Constit. of Athens, 62. 2.

⁴ The so-called *ἄξονες*: Plut. Solon 25; Paus. 1. 18. 3; Harpocrat. s. v. *ἄξονι*; the *ἄξονες* and *κύρβεις*, Poll. VIII, 128.

⁵ Arist. Const. 3. 5.

⁶ 1. 18. 3; cf. Judeich, Rhein. Mus. XLVII, 55. From the words of Paus. § 4—*ἐν τρεῦθεν* (i. e. from the Prytaneum) *λοιῶσιν ἐς τὰ κάτω τῆς πόλεως*—we infer it was near the top of the rock; cf. Gerhard, Phil. IV, 382; Bursian, Geogr. v. Griech. I, 295; Petersen, Arch. Ztg. X, 412; Wachsmuth, Stadt Athen, 1. 221 sq.; Harrison, Anc. Athens, 165-8. Bötticher believed he had found remnants of it between the churches of Hagios Soter and Hagios Simeon, just behind Hagios Nicolaos: Philol. Suppl. Bd. III (1867), 359 sq. For this position see Curtius, Topogr. Karte VI, at end of his Stadtgesch.; and Hitzig-Blümner, Paus. I. Tafel 2. But Milchhöfer, Baum. Denkmäler, art. Athen, 1. 172, says no remnants are to be found. The street of the Tripods began at the Prytaneum; Paus. 1. 20. 1.

⁷ Cf. Poll. IX, 40. For the theory of Curtius, see Stadtgeschichte, (Berlin 1891), pp. 51, 60, 224-5, 302: cf. Attische Studien (1863-4) II, 62, 65. His views have been accepted by Schöll, in Hermes VI (1872), p. 19 (cf. Jen. Literaturztg. (1875), p. 690); Hagemann, p. 22 sq. and Marindin (Smith's Dict. of Antiq.³ 2, p. 514).

kept her original seat on the Acropolis,¹ as the city grew, her hearth was transferred to the old agora which he assumes was south of the Acropolis.² Here a new hearth and palace³—inseparable from the Prytaneum—arose as representative of the older ones and thereafter the King came down and treated with his people there.⁴ Nearby stood the Bucoleum, which at first was a sort of dairy and royal slaughter-house, but later the residence of the King-archon, where, down to the fourth century B. C., during the festival of the Anthesteria, the ceremonial marriage of his wife to Dionysus took place.⁵ Still later, as the space north of the Acropolis and east of the Cerameicus began to be used—a change already noticeable in the Peisistratid era—the hearth and Prytaneum were transferred to the north slope of the Acropolis where Pausanias saw them. Curtius believes the change took place in Macedonian times and under the initiative of Demetrius Phalereus toward the end of the fourth century B. C.⁶ As this part of the city was originally a suburb, he believes the Prytaneum could not have stood there in early days. The new one in comparison with the old one in the agora was a magnificent building.⁷ The older one was so eclipsed by the newer that eventually only certain judicial functions, the court under discussion, were carried on in its vicinity. Curtius

¹ C. I. A. III, 316, 317.

² Here he follows Thucyd. II, 15: this was the region of Kydathenaion, where the nobles dwelt; cf. Hesychius, s. v. *Κυδαθηναῖος*; etc.

³ *βασιλειον*; cf. Poll. VIII, 111.

⁴ Just so Numa built his regia at the foot of the Palatine on the edge of the Forum; cf. Servius, Verg. Aen. 8, 363.

⁵ Arist. Const. 3. 5. Bekk. Anecd. gr. 449, 19–21, says the Bucoleum and Prytaneum were together; cf. Suidas, s. v. *ἄρχων*. Poll. VIII, 111 says the palace and Bucoleum were together. Also the *Λιμοῦ πεδῖον* was in the neighborhood: Zenob. 4. 93; cf. Bekk. 278, 4; 293, 32 and 296. 14; Phot. s. v. *πεδία*; Diogenianus, VI, 13; Hesych. s. v. *Λιμοῦ πεδῖον*. Perhaps the sacred ploughing (*βουζύγιος*, sc. *ἄροτος*) mentioned by Plut. Coniug. Praecept. 42, cf. Hesych. s. v. *Βουζύγης*, Philo, 2. 6. 30, took place near the Bucoleum; cf. Bötticher, l. c. p. 316.

⁶ He was governor of Athens 317–311 B. C., and was driven from the city in 306 B. C.

⁷ *οἶκος μέγας* (Schol. Thucyd. 2. 14): the old one was called *οἰκίσκος* (Schol. Aristoph. Equit. 167). The new one was also called *Πρυτανικόν*: C. I. A. II, 390, l. 20; 391; 394; 417; etc.

believes they never took place in the building mentioned by Pausanias.¹

The arguments of Curtius have been vigorously opposed.² Thus Poland places the Prytaneum in the temenos of Dionysus ἐν λίμναις, where Aristotle places the Bucoleum, in which the marriage already mentioned was celebrated.³ Curtius had placed this enclosure east of the old agora, i. e. south of the eastern end of the Acropolis.⁴ Dörpfeld has given strong reasons for locating it south of the Areopagus, i. e. southwest of the Acropolis.⁵ Poland, therefore, places the older of the two Prytanea, for with Curtius he assumes there were two, in that region.⁶ Lastly, Lipsius believes the court of the Prytaneum must always have been in the agora.⁷ Though the question cannot be settled and though the arguments of both Curtius and Poland seem plausible, there is no real evidence that the Prytaneum after the royal period ever stood anywhere else than on the northern slope of the Acropolis, where Pausanias saw it.⁸

¹ We get no help in solving the problem from Pausanias whose description of the murder courts (I. 28. 5-8. 11) seems to be only an antiquarian excursus, introduced into his narrative on mentioning the Areopagus. Such courts would be unimportant for travellers and they were widely separated, from the Areopagus to the Piraeus: see Schubart, *Jahrb. f. Philol.* XCVII, 825 sq.; Wachsmuth, *op. cit.* I. 132 (cf. *Rhein. Mus.* XXIV, 36); Hagemann, p. 28, n. 46. However, Curtius, p. 289, believes Pausanias' account is topographical and that Roman travellers would be interested in these courts as they honored Athens as the cradle of their legal system (cf. Aelian, *Var. Hist.* VIII, 38).

² e. g. by Bursian, *de foro Athen.* 13; Lolling, *Hellen. Landeskunde u. Topogr.* (Müller's *Handbuch*, III, p. 320, n. 3), and others named in the text.

³ *Griech. Stud.* H. Lipsius dargbr. (1894), p. 85.

⁴ *Op. cit.* p. 61, fig. 13; cf. O. Müller, *Kleine Schriften*, II, 156, who placed it beneath the east end of the Acropolis, and Bötticher, I. c., to the north.

⁵ *Athen. Mitt.* XVII, 439; XIX, 143.

⁶ Dörpfeld, *Ath. Mitt.* XX, 185, also assumes two, the one mentioned by Pausanias being of Roman origin, the other, southwest of the Acropolis; cf. also Maas, *de Lenaeo et Delphinio*, Greifswald, 1891, p. 7.

⁷ *Das Attische Recht und Rechtsverfahren* [based on Meier-Schömann's *Der Attische Process*² (1881-6)], I (1905), 58.

⁸ See Frazer, *Pausanias*, II, p. 172; cf. Wachsmuth, *Stadt Athen*, I. 46; for discussion of location see Hitzig-Blümner, *Pausanias*, I (1896), I, 1. pp. 221-212; cf. p. 316.

One of the important features of the Prytaneum was the curious murder process held in its immediate neighborhood. Many Greek writers and inscriptions mention these trials, which appear to have comprehended three kinds of cases. In the first place, if a murderer was unknown or could not be found, he was nevertheless tried; also lifeless things, such as stones, beams, pieces of iron, etc., which had caused the death of a man by falling upon him, were tried here, as well as animals which had similarly been the cause of death.

For the first case Aristotle says tersely: "Whenever [the King-archon] does not know the one who did the deed, suit is brought against the doer".¹ Plato, whose striking precepts for his ideal laws were largely taken from existing Athenian laws,² gives the procedure more fully: "If a man is found dead, and his murderer be unknown, and after a diligent search cannot be detected, there shall be the same proclamation as in the previous cases, and the same interdict on the murderer; and they shall proceed against him and announce in the agora, that he who has slain such and such a person and has been convicted of murder, shall not set his foot in the temples, nor at all in the country of the murdered man, and if he appears and is discovered, he shall die and be cast forth unburied beyond the border".³

The second case is given by Demosthenes in his speech against Aristocrates in these words: "If a stone or a piece of wood or iron or anything similar falls and strikes a man, and the person who threw the thing is unknown, but the thing which killed the man is known and in the hands of the judges, it is tried at the Prytaneum".⁴ He goes on to argue that if it

¹ Constitution of Athens, 57. 4: *ὅταν δὲ μὴ εἰδῇ τὸν ποιήσαντα, τῷ δράσαντι λαγχάνει*. Here Mommsen, *Feste*, p. 519, n. 7, wrongly makes *δράσαντι* neuter, referring to the thing causing the death: thus he would do away with the first case entirely, whose existence is proved by several writers. *ὁ δράσας* regularly means "culprit": cf. Plato, *Laws*, IX, 874 B; Soph. *Trachin.* 1108; etc.

² Lipsius, *op. cit.* p. 131.

³ *Laws*, IX, 874 A (Jowett): cf. Pollux, VIII, 120, who states the law clearly.

⁴ 23. 76 (followed by Harpocrat, s. v. *ἐπὶ Πρυτανείῳ*; and epitomized by Suidas, Photius, etc. s. v. *ἐπὶ Πρυτανείῳ*): cf. *Etymol. Magn.* 362. 55; Bekk. 311, 15; Aeschines, 3. 244; Paus. I. 28. 10; Aristotle, *Const.* 57. 4; Poll. VIII, 120.

is not right that inanimate and senseless things (*τῶν ἀψύχων καὶ μὴ μετεχόντων τοῦ φρονεῖν*), when under such a charge, should be left untried, it is surely impious that a man who is possibly innocent, but who, even if guilty, is at all events a human being, should be adjudged without a hearing and be given over to his accusers. Plato, who gives the law in full, exempts from its operation thunderbolts or "other fatal darts from the gods", and makes no distinction between men falling upon the thing or the thing falling upon them.¹

Of the trial of animals we know but little. The fact that they took place is attested by Aristotle² and especially Plato, who says: "And if a beast of burden or other animal cause the death of anyone, except in case of anything of that kind happening in the public contests, the kinsmen of the deceased shall prosecute the slayer for murder, and the wardens of the country, such, and so many as the kinsmen appoint, shall try the cause, and let the beast, when condemned, be slain by them and cast beyond the borders".³

In order to understand the issues raised by cases of this kind, we must keep in mind the Greek view of homicide. Manifestly the second case (and probably the third) was merely an amplification of the first; if the human murderer could not be found, the thing or animal that had been the agent in the slaying, if it could be found, had to be tried. For the idea was that, in case of a murder, not only a crime had been committed, but also a pollution had been caused in the community and some person or thing was to blame and must be punished to rid the state of defilement. A good idea of the Greek view that one or other was responsible is afforded by the subject-matter of Antiphon's Second Tetralogy. A boy was killed by running in the way of a javelin hurled by a youth who was practicing javelin-throwing in the gymnasium. The boy's father immediately accused the youth of accidental homicide. The question to be decided was, who was to blame? Evidently it was the boy, the youth or the javelin. If either of the first two, the case would be referred to the court of the Palladium, where cases of unpremeditated homicide were tried: if the javelin, it would be assigned to the

¹ Laws IX, 873 E-874 A.

² Constit. 57. 4.

³ Laws, IX 873 E (Jowett).

Prytaneum. In the actual case, however, it was only a question of living agents, and the boy's father haled the youth before the Palladium. The judges had nothing to do with the question of how far either youth or boy was morally to blame; they only had to decide who was the cause of death and the existing laws fixed the penalty. Nor must we think there was any lack of seriousness in the Greek view-point. We only have to remember that Pericles and Protagoras are said to have spent a whole day arguing just such a question.¹

As to how these trials were conducted we have but little information. We know that like all other murder trials at Athens they took place in the open air, so that, as Antiphon says, the judges might not sit under the same roof with one accused of impiety.² From a hint in the passage already quoted from Plato, in reference to the trials of unknown murderers, we can infer that the proceedings at the Prytaneum were the same as those in all the other Athenian homicide courts. This procedure we know from statements in various writers, especially from the orators. Thus the indictment (*γραφὴ φόνου*) was laid by the relatives of the victim within the usual degree of cousins' children inclusive.³ For the nearest of kin was bound by religious sanction from the earliest times to avenge blood guilt. The judicial summons (*πρόσκλησις*),⁴ that the murderer appear before the King-archon⁵ and answer the charges, was made by the kinsman before witnesses. The writ was not made against any suspect by name in the case of un-

¹ Plut. Pericles, 36.

² V. 11: cf. Aristotle, Const. 57. 4. The homicide cases were tried *ἐπὶ Πალλαδίῳ*, *ἐπὶ Δελφινίῳ*, etc.; cf. Aristot. 57. 3; Demosth. 23, 71, 74, 76. Pausanias, though using *ἐπὶ* in the other cases, says *τὸ δ' ἐν Πρυτανείῳ*, 1. 28. 10; but probably this is without significance. Similarly among the ancient Germans, courts were in the open air: cf. Grimm, *Deutsche Rechtsaltertümer* (ed. Heusler and Hübner, 1899), pp. 793 sq.

³ Demosth. 47. 72; law, 43, 57; C. I. A. I, 61, 1. 17. Of course in the first case there could be no arrest (*ἀπαγωγή*), which only happened when the man was caught in the act (*ἐπ' αὐτοφώρῳ*): cf. Antiphon, V, 9; Andoc. 1. 88; Demosth. 24. 113.

⁴ Demosth. 43. 15; Lysias, 104, 13; Aristoph. *Vespae*, 1041; cf. Plato, *Laws VIII*, 846 B, and *IX*, 855 D.

⁵ Arist. *Constit.* 57. 3.

known murderers, but ran generally "against those who had done and slain".¹ The prosecutor uttered at the funeral the solemn denunciation, technically called *πρόρρησις*,² warning the murderer to keep away from all public places, sanctuaries, assemblies, etc.³ This interdict was repeated by the King-archon in the agora.⁴ It was felt to be necessary to keep the people free of contagion, and temples and altars would have become unclean from the murderer's presence; and these were the very places where men were wont to come to be purified. This pollution continued until the manslayer had expiated his crime by proper ceremonies.⁵ If the man ever returned and was seen walking in the public places, the prosecutor could carry him off to prison where he would remain until tried again.⁶ He was safe as long as he kept away, and whoever killed him under those conditions was himself treated as a murderer.⁷ Three successive investigations in three succes-

¹ Demosth. 47. 69; cf. Arist. Constit. 57. 4.

² Antiphon, V, 88; VI, 6; Demosth. 47, 69; Plato, Laws, IX, 871 C, 873 A, etc. Those who met a violent death at Athens were interred with peculiar formalities. We learn from several writers, (Demosth. *ibid.*, Eurip. Troad. 1148, Harpocration, s. v. *ἐπεεργκεῖν δόρυ*) that, to symbolize the pursuit of the murderer, the accuser carried a spear in front of the procession, and, after having made the proclamation at the tomb, stuck it upright on the grave and watched it for three days.

³ Demosth. 20, 158; law, 23, 37; Antiph. V, 10; cf. Soph. Oed. Tyr. 236, where the denunciation of the murderer of Laius put into the mouth of Oedipus is borrowed from Attic law. Plato, Laws, IX, 871 A, says if the kindred fail to prosecute they also become involved in pollution and become hateful to the gods.

⁴ Arist. l. c.; Bekk. 310, 6-9; Plato, Laws, IX, 874 A. Plato in this passage says the *πρόρρησις* is given in the case of unknown murderers after conviction.

⁵ Cf. Aeschyl. Eumen. 230, where the chorus of Furies say they will pursue Orestes to death; also *ibid.* 421-3, where they say they will hound him to "where to rejoice not is the appointed doom".

⁶ Demosth. 23. 80; law, 23. 28; cf. Plato, Laws, IX, 865, who mentions an "ancient tale" that the murdered man is angry at his slayer, and, when he sees him walking in his accustomed haunts, becomes disordered and this disorder is communicated to the slayer. Therefore the homicide must stay away from the land of his victim for one year or be punished.

⁷ Demosth. 23. 37.

sive months were made by the King-archon,¹ and the case was tried on the last three days of the fourth.²

Such in brief, then, was the procedure in all murder trials at Athens. In the cases at the Prytaneum, however, though the culprits were solemnly heard and condemned, there seems, as Cauer has shown,³ to have been no proper decision (*διαγνώναι*), owing to the fact that such trials were more religious than judicial in character, like the deodand trials in England. We know that the tokens of the slaying, as well as animals, if found guilty, were cast beyond the borders, to free the land from pollution.⁴

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¹ Antiph. VI, 42.

² Poll. VIII, 117; cf. Antiph. I. c., who says the last three months of the Attic year were excluded for trying homicide cases because the archon was not allowed to hand them over to his successor.

³ Verhandl. d. 40. Philol.-Versamml. zu Görlitz, 110.

⁴ Aeschines 3. 244; Poll. VIII, 120; Paus. 6. 11. 6 (= the sea at Thasos, i. e. the border); Harpocrat.; etc. Plato, Laws IX, 874 A, also adds that the unknown murderer, if later found, "shall die and be cast forth unburied beyond the border".

(To be continued)